THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

WRIT PETITION NO : 17768 of 1997

Dated 19.10.2005

Between:

1 Pabolu Subbaiah, S/o.Venkata Subbaiah,
R/o.Buchireddipalem Village and Mandal, Nellore District and

others

..... PETITIONER(S)

AND

1 The Executive Officer, Buchireddipalem Grampanchayat,
Buchireddipalem Mandal, Nellore District and others

.....RESPONDENT(S)

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

WRIT PETITION NO : 17768 of 1997

ORDER:

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to quash the impugned notices dated 14.7.1997 issued by the Gram Panchayat, Buchireddipalem.

The petitioners claim to be the true and absolute owners of a piece of land situate in S.No.241/2 within the local area of the respondent Gram Panchayat. In the impugned show cause notice it is alleged that the petitioners have made construction of buildings without submitting plans and without obtaining permission

of the Gram Panchayat, as is required in law. It is also alleged that the construction of buildings made by the petitioners is without the approval of the gram panchayat. The petitioners were accordingly directed to remove the constructed buildings within 15 days from the date of receipt of the notice and report the same to the office of the Gram Panchayat and on their failure to comply with the directions, the buildings so constructed will be demolished and expenses incurred therefor will be realised from them.

In this writ petition, learned counsel for the petitioner Sri S.V.Muni Reddy, submits that the impugned notice dated 14.7.1997 suffers from incurable infirmities requiring the interference of this Court. It is also contended that the impugned notices are final in their nature though styled as 'notice' since no prior notice has been issued by the Gram Panchayat requiring the petitioners to submit their explanations. That apart, it is contended that the impugned proceedings are in the teeth of the orders dated 17.12.1996 passed by this Court in W.P.No.11069 of 1996.

This Court finds substantial force in the submissions made by the learned counsel for the petitioners. The impugned proceedings though styled as notices are final in their nature, which require the petitioners to demolish the existing constructions already made by them. The question is whether the petitioners obtained any prior permission as is required in law?

It appears that the respondent Gram Panchayat vide its proceedings dated 6.6.1996 sought to cancel the permissions already granted to the petitioners on 28.4.1995 enabling them to construct the buildings. This was challenged by the petitioners in W.P.No.11069 of 1996. This Court found that the impugned orders therein were not preceded by show cause notice to the petitioners and therefore bad in law. The proceedings dated 6.6.1996 cancelling the permission granted on 28.4.1995 was accordingly quashed on the ground that the petitioners were not given any opportunity of being heard before cancelling the permission granted for construction of the houses. This Court however observed that the order passed in the writ petition shall not preclude the gram panchayat from issuing appropriate show cause notice and taking further action according to the notice.

The Gram Panchayat instead of issuing notice, if it is so interested to cancel the permissions already granted, passed the impugned orders directing the

petitioners to pull down the constructions already made. The gram panchayat did not even refer to the permission granted to the petitioners on 28.4.1995, which was sought to be cancelled by the proceedings dated 6.6.1996, which was set aside by this Court. The Gram Panchayat obviously acted on extraneous grounds, which cannot be countenanced by this Court. The Gram Panchayat did not even refer to the order passed by this Court quashing the order dated 6.6.196 whereunder the permissions granted to the petitioners were sought to be cancelled. It is obvious that the gram panahcyat had granted the permissions to the petitioners on 28.4.1995 which fact has been noticed by this Court while disposing of W.P.No.11069 of 1996. It is a different matter altogether as to whether the petitioners made constructions in accordance with the permission granted by the gram panchayat or made any deviation in the matter of construction. But, that is not the case of the gram panchayat. The case of the gram panchayat is as if the petitioners made constructions without any permission granted by the Gram Panchayat. The allegation that the petitioners made constructions without obtaining any permission from the gram panchayat is absolutely baseless as is evident from the orders passed by this Court in W.P.11069 of 1996 which has attained its finality. Obviously, the Gram Panchayat acted in a motivated manner with a view to harass the petitioners. It is surprising as to how the gram panchayat could have acted in such a manner even after the disposal of W.P.No11069 of 1996 filed by the very same petitioners. The action is totally untenable and unsustainable.

Viewed from any angle, the impugned proceedings are liable to be quashed. They are accordingly quashed. The writ petition is accordingly allowed with costs.

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msv.